

### **REMARKS/ARGUMENTS**

Claim 1 has been amended to address the rejections under 35 U.S.C. §112 and to incorporate the substance of claim 16 therein. Claim 16 has been canceled. Claims 8 and 12 have been amended to conform to the amendment made to claim 1.

Reconsideration of the application in view of the foregoing amendments and the following remarks is respectfully requested.

Claims 1-4 and 15-22 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Diamond et al. (U.S. Patent No. 5,804,237) in view of Knize (U.S. Patent No. 3,799,388) and further in view of Creegan (U.S. Patent No. 3,105,765) and Shepard (U.S. Patent No. 4,560,080). Applicants respectfully traverse this rejection.

Diamond et al. discloses a thin wall sealed container containing edible material sterilized in a sterilization process and an inert gas under pressure, the side wall of the container being maintained rigid by the pressure of the inert gas but being easily deformable in the absence of such pressure, the container having a top end and a bottom end with at least the top end having a concave slope relative to the inside of the container, the top end being of a material and having a thickness and shape such that the top end will retain a substantially concave slope before, during and after said sterilization process but will become convex only if there is any additional gas pressure generated due to bacterial action in the pressurized, sealed container.

In Diamond et al. the concavity of the top end extends downwardly and inwardly from an upper chime at the side wall. In contrast, the container specified in claim 1 has a concavity which is defined inwardly and spaced from the side walls or chime portion of the container. More specifically, the concavity is formed inwardly of the inwardly formed raised portions (see Fig. 3, for example).

Assuming the same dimensions, including the same slope of the concave portion, the container defined in claim 1 will have a greater headroom than the container of Diamond et al.

In view of the foregoing, it is respectfully submitted that claim 1 is clearly patentable over Diamond et al.

Knize, Creegan and Shepard teach nothing about a concavity in the top or any other location and, therefore it is clear that claim 1 is patentable over the combination of Diamond et al., Knize, Creegan and Shepard.

Claims 2, 4 and 15-22 are dependent either directly or indirectly from claim 1 and are, therefore, patentable for the same reasons, as well as because of the combination of the features set forth in these claims with the features set forth in the claims from which they depend.

Claims 3 and 5 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Diamond et al. as applied to claim 1 and further in view of Saunders, U.S. Patent No. 3,608,774. Applicants respectfully traverse this rejection.

Claims 3 and 5 are dependent indirectly from claim 1. Since Saunders does not cure any of the deficiencies of claim 1 noted above, it is respectfully submitted that claims 3 and 5 are therefore patentable over the combination of Diamond et al. and Saunders for the same reasons advanced above in connection with claim 1 as well as because of the combination of the features set forth in these claims with the features set forth in claim 1.

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as First Class Mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on February 25, 2004

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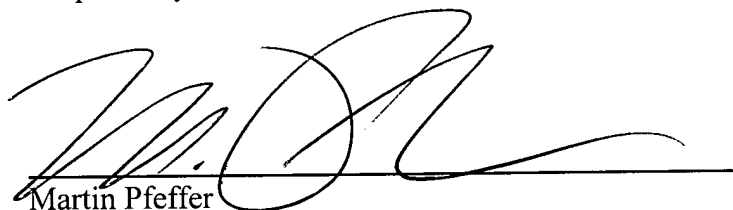
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February 25, 2004

Date of Signature

Respectfully submitted,



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